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8 UNITED STATES DISTRICT COURT  
9  
10 NORTHERN DISTRICT OF CALIFORNIA

11 COYNESS L. ENNIX JR., M.D., as an  
12 individual and in his representative  
13 capacity under Business & Professions  
Code § 17200 *et seq.*,

14 Plaintiff,

15 vs.

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17 RUSSELL D. STANTEN, M.D., et al.,

18 Defendants.  
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Case No.: C 07-2486 WHA

**PLAINTIFF'S MOTION TO ALTER  
THE BRIEFING AND HEARING  
DATES RELATING TO  
DEFENDANTS' MOTION TO  
DISMISS AND SPECIAL MOTION  
TO STRIKE**

**Date: TBS**

**Time: TBS**

**Dept.: Ctrm. 9, 19<sup>th</sup> Floor**

**Judge: Hon. William H. Alsup**

**Complaint Filed: May 9, 2007**

**Trial Date: TBS**

Pursuant to Civil Local Rule 6-3, plaintiff hereby requests that the Court issue an Order changing the briefing and hearing dates for defendants' Motion to Dismiss and Special Motion to Strike. This motion is based on this memorandum, the Declaration of G. Scott Emblidge filed herewith, the pleadings in this case and such other and further evidence and arguments as the Court may properly consider at any hearing on this motion.

### RELIEF SOUGHT

Plaintiff respectfully seeks this Court's order setting the following briefing and hearing schedule for defendants' Motion to Dismiss and Special Motion to Strike:

Plaintiff's Opposition Papers Filed:	July 19, 2007
Defendants' Reply Papers Filed:	August 2, 2007
Hearing:	August 16, 2007 (or as soon thereafter as suits the Court)

### FACTUAL BACKGROUND

This case alleges that Alta Bates Medical Center and individual members of the medical staff subjected plaintiff, a highly respected African American cardiac surgeon, to unlawful and unfair treatment in the course of a sham peer review process. (Emblidge Decl. ¶ 1.) On or about May 30, 2007, defendants filed a Motion to Dismiss plaintiff's complaint and a Special Motion to Strike plaintiff's complaint. Defendants noticed both motions to be heard by this Court on July 5, 2007, the minimum amount of time possible under the rules of this Court. (*Id.*) Defendants' counsel did not consult with plaintiff's counsel before setting these hearings. (*Id.*)

The next day, on Thursday, May 31, 2007, plaintiff's counsel, Scott Emblidge, wrote to counsel for defendants, Maureen McClain, requesting that defendants agree to move the hearing date. Mr. Emblidge explained to Ms. McClain: "These are critical and complicated motions involving complex legal issues. Under Local Rule 7-2, the Court encourages parties to stipulate or seek a Court order establishing longer notice periods for motions like these." (Emblidge Decl. ¶ 2, Exh. A.) Indeed, these motions go to the heart

1 of plaintiff's case. If they succeed, plaintiff is left without a remedy for the wrongs  
 2 alleged in his complaint. If they fail, plaintiff will have the opportunity to prove his case.  
 3 (Emblidge Decl. ¶ 2.)

4 Mr. Emblidge's May 31 letter explained that plaintiff's counsel could not possibly  
 5 respond adequately to these motions earlier than July 12 due to an unusually heavy  
 6 calendar involving multiple motions, depositions and hearings and a long-planned family  
 7 vacation, during which he would be out of state from June 14 until June 21. (Emblidge  
 8 Decl. ¶¶ 3-6.) In light of these time constraints and importance of these motions, Mr.  
 9 Emblidge asked Ms. McClain to stipulate to the following schedule:

10	Plaintiff's Opposition Papers Filed:	July 12
11	Defendants' Reply Papers Filed:	July 26
12	Hearing:	August 9

13 (Emblidge Decl. ¶ 7.)

14 In response Ms. McClain insisted on a number of preconditions to any stipulation  
 15 to extend the schedule for defendants' motions. (Emblidge Decl. ¶ 8-11, Exh. B.) Ms.  
 16 McClain also pointed out that the Court was not available on the August 9 hearing date  
 17 plaintiff originally proposed and insisted on an August 2 hearing date instead. (Emblidge  
 18 Decl., Exh. B.)

19 Mr. Emblidge agreed to Ms. McClain's many preconditions, but did not agree to  
 20 the August 2 hearing date because he will be away at a week-long family vacation camp  
 21 in Santa Barbara on August 2. (Emblidge Decl. ¶ 12, 13, Exh. C.) Accordingly, on June  
 22 4, Mr. Emblidge proposed a revised schedule with a hearing date of August 16, 2007.  
 23 (Emblidge Decl., Exh. C.)

24 Ms. McClain responded by email on June 4 rejecting this change. (Emblidge  
 25 Decl. ¶ 14, Exh. D.) After further efforts by plaintiff's counsel to resolve the dispute, Ms.  
 26 McClain responded that she would not agree to any extension beyond August 2 and told  
 27 plaintiff's counsel he should seek a court order if he needed more time. (Emblidge Decl.,  
 28 Exh. D.)

1 Mr. Emblidge cannot change his August family vacation plans, which are long-  
2 planned and paid for. (Emblidge Decl. ¶ 15.) Further, Mr. Emblidge is the lead attorney  
3 on this case and cannot delegate these critical hearings to other attorneys in his practice.  
4 (*Id.* ¶ 16.)

### 5 ARGUMENT

6 If this Court does not alter the briefing schedule as requested, plaintiff would be  
7 substantially harmed because plaintiff's counsel cannot respond adequately to these  
8 critically important motions with the minimum statutory notice due to an unusually heavy  
9 work load and family vacation.

10 In contrast, hearing these motions on August 16 rather than August 2 would not  
11 prejudice defendants, nor would it significantly impact the schedule for this case.  
12 Plaintiff agreed to Ms. McClain's conditions ensuring no prejudice to defendants' Special  
13 Motion to Strike by this minimal delay. Further, Plaintiff has not yet propounded  
14 discovery in this case. (*Id.* ¶ 17.) Finally, plaintiff would agree to change the date for the  
15 Case Management Conference to suit the Court's schedule and ensure that associated  
16 filings are due after the hearing on defendants' pending motions. (*Id.* ¶ 18.)

### 17 CONCLUSION

18 For the reasons stated herein, this Court should grant plaintiff's motion to alter the  
19 briefing and hearing dates on defendants two pending motions as detailed above.

20 Dated: June 5, 2007

21 Respectfully Submitted,

22 MOSCONE, EMBLIDGE & QUADRA, LLP

23  
24 By: 

25 G. Scott Emblidge  
26 Rachel J. Sater  
27 Andrew E. Sweet

28 Attorneys for Coyness L. Ennix Jr., M.D.